

JUL 07 2011

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARIE MICHELLE ANDAYA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 07-71423

Agency No. A077-069-833

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted May 3, 2011
Pasadena, California

Before: GOODWIN and WARDLAW, Circuit Judges, and COGAN,
District Judge.**

Marie Michele Andaya, a native and citizen of the Philippines, petitions for review of an order denying asylum and withholding of removal. The petition is denied.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Brian M. Cogan, U. S. District Judge for the Eastern District of New York, Brooklyn, sitting by designation.

An immigration judge (IJ) concluded that her application for asylum was time barred. The one-year bar faced by an asylum applicant and the bar's exception for "extraordinary circumstances" involve mixed questions of law and fact, reviewable by this court when the facts, as here, are undisputed. *Husyev v. Mukasey*, 528 F.3d 1172, 1178-79 (9th Cir. 2008); *see also* 8 U.S.C. § 1158(a)(2), 8 C.F.R. § 208.4(a)(5). Andaya has failed to meet her burden of demonstrating extraordinary circumstances that justify the almost two-year period between losing her legal immigration status and applying for asylum. *See* 8 C.F.R. § 208.4(a)(5).

In addressing Andaya's request for withholding of removal, the IJ found that none of the past incidents faced by Andaya rose to the level of persecution and Andaya had not established that it was more likely than not that she would be persecuted upon her return to the Philippines. 8 C.F.R. § 1208.16. Substantial evidence does not compel a contrary result. *INS v. Elias-Zacarias*, 502 U.S. 478, 481 & n.1 (1992).

PETITION DENIED.